

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
JOHN M. MORAN)	
NORA F. MORAN)	Civ. Nos. 05-11091-RCL
)	05-11092-RCL
v.)	
)	
UNITED STATES OF AMERICA)	
_____)	

**ASSENTED-TO MOTION FOR LEAVE TO FILE REPLY OF JOHN MORAN AND
NORA MORAN TO GOVERNMENT’S RESPONSE TO PLAINTIFF’S MOTIONS TO
VACATE, SET ASIDE OR CORRECT SENTENCES PURSUANT TO TITLE 28,
UNITED STATES CODE, SECTION 2255**

Now come the defendants John Moran and Nora Moran and respectfully move that this Honorable Court permit the filing of Reply of John and Nora Moran to Government’s Response to Plaintiff’s Motion to Vacate, Set Aside or Correct Sentences Pursuant to Title 28, United States Code, Section 2255, previously filed with, and rejected by, the Court, which is 14 pages in length.

As reason therefor, movants state:

1. On July 21, 2005, John Moran and Nora Moran electronically filed with the Court their Reply of John and Nora Moran to Government’s Response to Plaintiff’s Motion to Vacate, Set Aside or Correct Sentences Pursuant to Title 28, United States Code, Section 2255.

2. On August 2, 2005, they were notified that the Reply was being rejected for failure to seek leave of Court for its filing.

3. Under Rule 4 of the Rules Governing Section 2255 Proceedings For The United States District Courts, the Court, if it does not dismiss the §2255 motion, “must order the United States Attorney to file an answer, motion, or other response within a fixed time” The Court in this case ordered the government to file an answer/responsive pleading to the Morans’ motions, which it did

on July 13, 2005. Rule 5(d) provides: “The moving party may submit a reply to the respondent’s answer or other pleading within the time fixed by the judge.” Unlike District of Massachusetts Local Rule 7.1(B)(3), the Rules Governing Section 2255 Proceedings For The United States District Courts expressly contemplate that the movant *will* be afforded the opportunity to file a reply to the respondent’s answer. *See* Advisory Committee Notes, 2004 Amendments (“[R]evised Rule 5(d) adopts the practice in some jurisdictions giving the movant an opportunity to file a reply to the respondent’s answer”).

4. Thus, under Rule 5(d), the Morans are entitled to an opportunity to file a reply to the government’s answer. Moreover, the filing of a reply is necessary to the full and fair presentation of the issues to this Court, for example, to correct and clarify the standards applicable to the Court’s determination of the issues presented and to respond to the government’s argument that their attorneys did not provide ineffective assistance of counsel within the meaning of *Strickland*.

5. The Morans accordingly request that this Honorable Court permit them to file their Reply of John and Nora Moran to Government’s Response to Plaintiff’s Motion to Vacate, Set Aside or Correct Sentences Pursuant to Title 28, United States Code, Section 2255, previously filed with, and rejected by, the Court. That document was 14 pages in length, and the Morans request that they be permitted to file a reply of that length. They have attempted to be as concise as possible in making their reply to the government’s answer, and believe that the 14 pages requested are necessary to a full and fair response to the government’s answer, which is 35 pages in length.

6. Christopher L. Varner, AUSA, assents to the granting of this Motion.

Respectfully submitted,
By their attorneys,

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Date: August 2, 2005